

§ 40.61a

(4) A person whose operations are limited to, and who holds a permit as, a manufacturer of processed tobacco.

(c) *Minimum manufacturing and activity requirements.* A permit to manufacture tobacco products will only be granted to those persons whose principal business activity under such permit will be the manufacture of tobacco products. A permit will not be granted to any person whose principal business activity under such permit will be to receive or transfer tobacco products in bond. As a minimum activity requirement, in order to qualify for a permit, the quantity of tobacco products manufactured under the permit must be equivalent to, or exceed, the quantity to be transferred or received in bond under the permit. For the purposes of this section, the activity of packaging processed tobacco may be sufficient to qualify as a manufacturing activity.

[T.D. TTB-78, 74 FR 29409, June 22, 2009]

§ 40.61a Transitional rule.

Any person who:

(a) On August 5, 1997, was engaged in business as a manufacturer of roll-your-own tobacco, and

(b) Before January 1, 2000, submits an application, as provided in this part, to engage in such business, may, continue to engage in such business pending final action on such application. Pending such final action, all provisions of chapter 52 of the Internal Revenue Code of 1986 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture roll-your-own tobacco under such chapter 52.

[T.D. ATF-424, 64 FR 71931, Dec. 22, 1999]

§ 40.62 Application for permit.

Every person, before commencing business as a manufacturer of tobacco products as defined in § 40.11, shall make application for, and obtain, the permit provided in § 40.75, covering operations at each proposed factory. Such application shall be made on TTB F 5200.3, in duplicate, to the appropriate TTB officer. All documents required under this part to be furnished with such application shall be made a part thereof. Where the applicant for a per-

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mit under this section holds a permit or permits authorizing the production of any tobacco products at premises to be covered by the permit applied for, the applicant shall surrender such permit or permits for cancellation, upon the issuance of the permit applied for.

(72 Stat. 1421; 26 U.S.C 5712)

§ 40.63 Corporate documents.

Every corporation, before commencing business as a manufacturer of tobacco products, shall furnish with its application for permit, required by § 40.62, a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation shall likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized to sign documents or otherwise act in behalf of the corporation in matters relating to 26 U.S.C. chapter 52, and regulations issued thereunder. The corporation shall also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the appropriate TTB officer and such information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for the purpose of this section.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1421, as amended (26 U.S.C. 5712))

[T.D. 6840, 30 FR 9310, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55854, Sept. 28, 1979]

§ 40.64 Articles of partnership or association.

Every partnership or association, before commencing business as a manufacturer of tobacco products, shall furnish with its application for permit, required by § 40.62, a true copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality.

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Where a partnership or association has previously filed such documents with the appropriate TTB officer and such documents are currently complete and accurate, a written statement, in duplicate, to that effect by the partnership or association will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 40.65 Trade name certificate.

Every person, before commencing business under a trade name as a manufacturer of tobacco products, shall furnish with his application for permit, required by § 40.62, a true copy of the certificate or other document, if any, issued by a State, county, or municipal authority in connection with the transaction of business under such trade name. If no such certificate or other document is so required, a written statement, in duplicate, to that effect by such person will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 40.66 Bond.

Every person, before commencing business as a manufacturer of tobacco products, shall file, in connection with his application for permit, a bond on TTB F 5200.25 or 5200.26, in duplicate, in accordance with the applicable provisions of subpart G of this part, conditioned upon compliance with the provisions of chapter 52, I.R.C., and regulations thereunder, including, but not limited to, the timely payment of taxes imposed by such chapter and penalties and interest in connection therewith for which he may become liable to the United States: *Provided*, That any person who, on the effective date of this part, October 1, 1961, has on file a valid and adequate bond, Form 2100, "Bond—Manufacturer of Cigars and Cigarettes," may continue, under such bond, the operations with respect to the permit to which that bond relates, in accordance with the provisions of this part.

(72 Stat. 1421, as amended; 26 U.S.C. 5711)

[T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 40.67 Blanket bond.

Where a manufacturer of tobacco products operates more than one factory he may, in lieu of filing separate bonds, file a blanket bond on TTB F 5200.25 or 5200.26, in duplicate, in accordance with the provisions of § 40.134, for any or all of the factories. The total amount of any blanket bond given under this section shall be available for the satisfaction of any liability incurred at any factory covered by the bond.

(72 Stat. 1421; 26 U.S.C. 5711)

[26 FR 8174, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975; 54 FR 48839, Nov. 27, 1989, and further redesignated by T.D. ATF-460, 66 FR 39093, July 27, 2001, as amended by T.D. TTB-91, 76 FR 5480, Feb. 1, 2011]

§ 40.68 Power of attorney.

If the application for permit or any report, return, notice, schedule, or other document required to be executed is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an individual is to otherwise officially represent such person, power of attorney on TTB F 5000.8 shall be furnished to the appropriate TTB officer. (For power of attorney in connection with conference and practice requirements see 26 CFR 601.501 through 601.527.) Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by § 40.63. TTB F 5000.8 does not have to be filed again with a appropriate TTB officer where such form has previously been submitted to that appropriate TTB officer and is still in effect.

[T.D. 6840, 30 FR 9310, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. TTB-91, 76 FR 5480, Feb. 1, 2011]

§ 40.69 Factory premises.

The premises to be used by a manufacturer of tobacco products as his factory may consist of more than one building, or portions of buildings, which need not be contiguous but must be located in the same city, town, or village: Except that, where the appropriate TTB officer determines that a building or portion of a building which